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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060197
Party	Defendant Live Eyewear, Inc.
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Submission	Answer
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Date	11/18/2014
Attachments	2014.11.18 Answer to Petition to Cancel.pdf(14491 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HORISUN FULFILLMENT, LLC

Petitioner,

v.

LIVE EYEWEAR, INC.

Registrant.

Mark: HORIZON

Registration No.: 4,009,970

Petition No.: 92060197

ANSWER TO PETITION TO CANCEL

Live Eyewear, Inc. (“Registrant” or “Live Eyewear”), by and through its undersigned counsel, hereby responds to the petition for cancellation as follows:

Live Eyewear admits that it is the owner of U.S. Trademark Registration No. 4,009,970 for HORIZON (the “‘970 Mark”), registered on August 9, 2011 and that Live Eyewear’s current address is 3490 Broad Street, San Luis Obispo, CA 93401. Live Eyewear denies all remaining unnumbered allegations in the preface.

THE PARTIES

1. Live Eyewear is without knowledge or information sufficient to form a belief as to paragraph 1 of the petition for cancellation and therefore denies the same.

2. Admitted.

3. Admitted.

STATEMENT OF FACTS

4. Live Eyewear is without knowledge or information sufficient to form a belief as to paragraph 4 of the petition for cancellation and therefore denies the same.

5. Live Eyewear admits that on or about June 27, 2014 it sent a cease and desist letter to Horisun Fulfillment, LLC. The contents of the letter speak for itself and Live Eyewear denies any interpretation by Petitioner, thus all further allegations of paragraph 5 are therefore denied.

6. Live Eyewear admits that on or about August 12, 2014 it caused to be filed a complaint in the Central District of California against Petitioner for infringement of the '970 Mark, among other causes of action alleged against Petitioner. Live Eyewear denies that it did not serve the complaint on Petitioner, as it was served on or about October 1, 2014.

7. Live Eyewear is without knowledge or information sufficient to form a belief as to paragraph 7 of the petition for cancellation and therefore denies the same. Live Eyewear refers to the records of the U.S. Patent and Trademark Office ("USPTO") for the particulars of the filings referred to in paragraph 7 of the Petition to Cancel.

8. Live Eyewear admits to serving the complaint on Petitioner on or about October 1, 2014 and denies all remaining allegations in paragraph 8 of the Petition to Cancel.

9. Denied.

10. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 10 of the Petition to Cancel.

11. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 11 of the Petition to Cancel.

12. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 12 of the Petition to Cancel.

13. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 13 of the Petition to Cancel.

14. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 14 of the Petition to Cancel.

THE '970 REGISTRATION SHOULD NOT HAVE ISSUED

15. Live Eyewear admits the '970 Mark is not yet eligible for incontestable status. The remaining allegations in this paragraph assert legal conclusions to which no response is required and on that basis Live Eyewear denies them.

16. The allegations in this paragraph assert legal conclusions to which no response is required and on that basis Live Eyewear denies them.

17. Denied.

18. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 18 of the Petition to Cancel.

19. Live Eyewear refers to the records of the USPTO for the particulars of the filings referred to in paragraph 19 of the Petition to Cancel.

20. Denied.

21. Denied.

LIVE EYEWEAR ABANDONED ANY ALLEGED RIGHTS IN THE HORIZON MARK

22. Live Eyewear admits it at all times relevant to this action it has or had a real interest in the '970 Mark. Live Eyewear denies all other allegations in paragraph 22 of the Petition to Cancel.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

Live Eyewear denies the unnumbered allegations in the conclusion that appears immediately after paragraph 27 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Petition to Cancel fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The claim set forth in the Petition to Cancel is barred in whole or in part by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

The claim set forth in the Petition to Cancel is barred in whole or in part by the doctrines of waiver, acquiescence, and estoppel.

FOURTH AFFIRMATIVE DEFENSE

Petitioner assumed the risk of the damage alleged by adopting for its commercial enterprise a mark that was confusingly similar to the '970 Mark.

FIFTH AFFIRMATIVE DEFENSE

Live Eyewear's specimen submitted in support of its application for registration of the '970 Mark is sufficient to show use in commerce.

Respectfully submitted,

LIVE EYEWEAR, INC.

Dated: November 18, 2014

By: /Nicole M. Norris/

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Live Eyewear, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO PETITION TO CANCEL has been served on Petitioner's counsel of record by mailing said copy on November 18, 2014 via First Class Mail, postage prepaid to:

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/Nicole M. Norris/
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